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7	III	JITED STATES OF	FAMERICA			
8	UNITED STATES OF AMERICA					
9	NATIONAL LABOR RELATIONS BOARD					
10	REGION 20					
11	SUTTER HEALTH SACRAMENT	O SIERRA) Case No. 20-RD-2475			
12	REGION D/B/A SUTTER ROSEVI CENTER,	LLE MEDICAL)			
13	Employer,		Ó SEIU, UNITED HEALTHCARE O WORKERS – WEST'S			
14	and	2	EXCEPTIONS TO HEARING OFFICER'S REPORT AND			
-) RECOMMENDATION ON			
15	KRIS MURPHREE,		OBJECTIONS			
16	Petitioner,))			
17	and					
18	SEIU, UNITED HEALTHCARE WO	ORKERS – WEST,))			
19	UNION.		,			
20) "~~			
21			"Union" or "UHW") takes the following			
22	exceptions to the Hearing Officer's Report and Recommendation on Objections issued on					
23	December 3, 2009 in the above-referenced case.					
24						
	Number Reference to Decision	Exception Taken T	<u>`o:</u>			
25	1. Pages 12-13		er's conclusion and finding "that the Union			
26		clothed [Melissa] J act on the Union's	ones with apparent and actual authority to behalf as its steward."			
27	2. Page 14	The Hearing Office	er's finding that "at minimum, during the			
28 Weinberg, Roger &	. .		began and [Nicole] Salois spent waiting in			
ROSENFELD A Professional Corporation 1001 Marina Village Parkway Suite 200 Alameda. CA 94501-1091 510.337.1001	UHW's Exceptions to Hearing Officer's Report and Recommendation on Objections Case No 20-RD-2475					

1 2			line, Jones held sustained conversations with at least 34 employees waiting in line to vote with a potential for dozens of more."
3	3.	Page 14	The Hearing Officer's finding that Deegan and Salois "spoke forthrightly and without guile."
5	4.	Pages 14-15	The Hearing Officer's finding that Deegan and Salois "both observed Jones walking the entire (visible) span of the voting
6			line talking at length about the Union and passing out Union paraphernalia at or around the same time in the afternoon, thus providing sufficient mutual corroboration."
7 8 9	5.	Page 15	The Hearing Officer's conclusion and finding that "[t]here is not sufficient evidence or argument that [Deegan and Salois] had any personal interest or bias which would predispose them to color their testimony."
10	6.	Page 15	The Hearing Officer's finding that Deegan and Salois did not
11			manufacture their testimony.
12	7.	Page 15	The Hearing Officer's finding that Deegan's "careful approach in limiting the number of employees waiting in line to those she could see and Salois's natural inclination to include those she
13 14			could not espy, but logically concluded were present, cannot reasonably be considered the product of collusion or fabrication."
15	8.	Page 15	The Hearing Officer's finding that Deegan's and Salois's testimony "is not inconsistent or inherently incredible."
16 17	9.	Page 15	The Hearing Officer's finding of credibility of both Deegan's and Salois's testimony in its entirety regarding the alleged
18	10.	Pages 15-17; 18	conduct of Jones on August 26, 2009. The Hearing Officer's failure to discredit the testimony of
19 20			Pavel Efremov, even after finding that, at best, he embellished and exaggerated his testimony, and, at worst, lied under oath.
21	11.	Page 16	The Hearing Officer's conclusion and finding that Efremov's testimony regarding Galen Smith's overall conduct on August 26 and August 27, 2009 "rings true."
22	12.	Page 16	
23	12.	rage 10	The Hearing Officer's conclusion and finding that Efremov's "exaggeration is superfluous and adds nothing to the analysis of whether Smith engaged in objectionable
24			'prolonged' conversations with employees"
25	13.	Page 16	The Hearing Officer's conclusion and finding that the veracity of Efremov's affidavit testimony "withstands scrutiny", even
26			after finding that, at best, he embellished and exaggerated his testimony at the hearing, and, at worst, lied under oath.
27	14.	Page 16	The Hearing Officer's decision to credit "the remainder of
28 weinberg, roger &			Efremov's testimony regarding the pattern of Smith's
ROSENFELD A Professional Corporation 1001 Marina Village Parkway		IIHW/'s Examina to I'	- 2 - Jenning Officer's Penert and Pegammandation on Objections
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2			electioneering and the content of Smith's conversations with employees; to wit, that Smith repeatedly walked the line of voters for an unknown number of minutes and engaged employees waiting in the voting line in conversation by saying,
3			'vote yes for the union and have a union by Labor Day."
4 5	15.	Pages 16-17	The Hearing Officer's conclusion that, even though Smith did not strike her as a disingenuous witness, based on Smith's status as a "representative of and with obvious loyalties to the
6			Union it is entirely possible that he downplayed the full extent of his [alleged] electioneering."
7	16.	Page 17	The Hearing Officer's conclusion and finding that Efremov
8			"owes no duty to the Petitioner, a fellow employee and the objecting party," and somehow, on that basis, is more credible than Smith, even after finding that, at best, Efremov
9			embellished and exaggerated his testimony, and, at worst, lied under oath.
10	17.	Page 17	The Hearing Officer's resolution of a "credibility conflict
11			between [Efremov and Smith] in favor of Efremov."
12	18.	Page 17	The Hearing Officer's finding, based on the testimony of Deegan, Efremov, and Salois, that the second prong of the
13 14			Milchelm rule has been satisfied and that Jones and Smith "engaged in impermissibly prolonged conversations with employees waiting in line to vote."
15	19.	Page 17	The Hearing Officer's conclusion and finding that "it is
16			logically consistent and inherently probable that Jones talked to other employees individually for longer than the two minutes
17			that Salois was personally able to observe and collectively for longer than the better part of a half hour that Salois stood in line."
18	20.	Page 17	The Hearing Officer's conclusion and finding that "[n]ot only
19		- 18	did Jones engage dozens of prospective voters waiting in line for several minutes, she passed out Union materials, thus
20			employing the type of 'last minute electioneering or pressure, and unfair advantage' the <i>Milchem</i> Board endeavored to deter."
21	21.	Pages 17-18	The Hearing Officer's conclusion and finding that the
22 23		1.00	"cumulative effect'of [Jones's] prolonged presence, gift giving, and extended conversations with employees waiting in line to cast ballots clearly violates the <i>Milchem</i> standard."
24	22.	Page 18	The Hearing Officer's finding that "Jones's egregious violation
25			of the <i>Milchem</i> rule is sufficient, in itself, to overturn the election results."
26	23.	Pages 18-19	The Hearing Officer's conclusion and finding that even crediting Smith's account, "his pattern of engaging voters, in
27			turn, up and down the line on not one, but at least two occasions, reveals a premeditated effort designed to sustain
28 WEINBERG, ROGER & ROSENFELD			communication with scores of employees waiting in line with
A Professional Corporation 1001 Marina Village Parkway Suite 200		UHW's Exceptions to H	- 3 - Iearing Officer's Report and Recommendation on Objections
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1		the potential to influence their votes at the last possible minute."
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3	24. Page 19	The Hearing Officer's conclusion that "Smith did not greet these employees in passing by 'chance' and the interactions with prospective voters were not 'isolated.""
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5	25. Page 19	The Hearing Officer's finding that "Jones and Smith engaged in 'prolonged' conversations within the meaning of <i>Milchem</i> "
6		
7	26. Page 20	The Hearing Officer's conclusion and finding that "approximately 100 employees were exposed to his objectionable conduct, more than enough to impact the results
8 9		of the election "
10	Dated: December 16, 2009	
10 11	Bated. December 10, 2009	WEINBERG, ROGER & ROSENFELD A Professional Corporation
i		By: Brice A. Harland
12		BRUCE A. HARLAND
13		Attorneys for Union SEIU, United Healthcare Workers – West
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PROOF OF SERVICE 1 (CCP 1013) 2 3 I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business 4 5 address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501-1091. On December 16, 2009, I served on the following parties in this action: 6 7 Aaron Agenbroad Kris Murphree Jones Day 220 Spur Avenue 8 Oroville, CA 95966 555 California Street, 26th Floor Fax: (530) 534-7023 9 San Francisco, CA 94104 Fax: (415) 875-5700 10 Christy J. Kwon 11 Regional Director NLRB, Region 20 NLRB, Region 20 12 901 Market Street, Suite 400 901 Market Street, Suite 400 San Francisco, CA 94103 San Francisco, CA 94103 13 Fax: (415) 356-5156 Fax: (415) 356-5156 14 copies of the document(s) described as: 15 SEIU, UNITED HEALTHCARE WORKERS – WEST'S EXCEPTIONS TO HEARING OFFICER'S REPORT AND RECOMMENDATION ON 16 **OBJECTIONS** 17 [X] BY MAIL I placed a true copy of each document listed herein in a sealed envelope. addressed as indicated herein, and caused each such envelope, with postage thereon fully 18 prepaid, to be placed in the United States mail at Alameda, California. I am readily familiar with the practice of Weinberg, Roger & Rosenfeld for collection and processing of 19 correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection. 20 [X]BY FACSIMILE I caused to be transmitted each document listed herein via the fax 21 number(s) listed above or on the attached service list. 22 I certify under penalty of perjury that the above is true and correct. Executed at Alameda. 23 California, on December 16, 2009. 24 25

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